



IT IS ORDERED as set forth below:

Date: January 30, 2008

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:	:	CASE NUMBER
	:	
ANTHONY NZERIBE,	:	07-73732-MGD
	:	
Debtor.	:	CHAPTER 13
	:	

ORDER

Before the Court are Debtor's Motion to Reconsider, Alter, or Amend Order Denying Debtor's Emergency Motion to Set Aside the Orders Denying Confirmation of Plan; Lifting Automatic Stay; Dismissing Chapter 13 Petition and Closing the Estate ("Motion for Reconsideration") (Docket No. 44); Debtor's Motion for a Stay of Order Denying Emergency Motion to Vacate Order of Dismissal of Chapter 13 Proceeding Pending Appellate Review of the Order ("Motion for Stay") (Docket No. 46); Debtor's Motion for Clarification of Record (Docket No. 49); and Debtor's Motion for Expedited Rulings (Docket No. 51). Debtor's Motion for Expedited Rulings simply requests that the Court rule on Debtor's Motion for Reconsideration in a timely fashion so that the appeals process is not delayed. This Order therefore resolves Debtor's Motion for Expedited Rulings.

Debtor's Motion for Reconsideration

Debtor's Chapter 13 plan came on for confirmation, on notice, on October 31, 2007. Counsel for the Chapter 13 Trustee filed objections to the confirmation of Debtor's plan on October 11, 2007, and appeared at the October 31 hearing to oppose confirmation. Debtor did not appear at the confirmation hearing and the Trustee's objections to confirmation had not been previously resolved. Confirmation was therefore denied and the case was dismissed by Order of this Court entered November 1, 2007. The Chapter 13 Trustee filed her final report and accounting on November 28, 2007, indicating that Debtor paid no money into his Chapter 13 plan, and the case was timely closed on December 4, 2007. On December 26, 2007, Debtor filed an emergency motion requesting that his case be reopened and that the Court set aside its Order denying confirmation and dismissing Debtor's case and that the Court set aside its Order lifting the automatic stay¹ or issue an order staying a January 2, 2008 foreclosure. ("Emergency Motion") (Docket No. 36). The Court concluded that because Debtor failed to meet the requirements for confirmation and failed to adequately explain his absence from the confirmation hearing, the Court had no basis upon which to vacate its Order denying confirmation and dismissing Debtor's case. The Court entered its Order denying Debtor's Emergency Motion on December 27, 2007, the day after it was filed, to allow Debtor time to file a new bankruptcy petition and invoke a stay under 11 U.S.C. § 362(c)(3) or take

¹ Debtor's Emergency Motion requested that the Court "set aside its order lifting automatic stay" and Debtor's Motion for Reconsideration seeks reconsideration of this Court's Order denying such relief. Motions for Relief from Stay were filed by Fifth Third Bank (Docket No. 22), Ocwen Loan Servicing, LLC (Docket No. 26), and Wells Fargo Bank, N.A. (Docket No. 28), but no orders were entered on those motions and the motions remained pending upon the dismissal of Debtor's case. So while the stay terminated upon the dismissal of Debtor's case on November 1, 2007, this Court never issued an order lifting the stay.

other timely action to prevent the January 2, 2008 foreclosure referenced in Debtor's Motion. It is this Order that is the subject of Debtor's Motion for Reconsideration. This is also the Order from which Debtor appealed to the District Court, though Debtor has included a number of other matters, including the actual dismissal of his case, in his designation of issues on appeal.

While the filing of a notice of appeal generally transfers jurisdiction of the issues on appeal from the bankruptcy court to the district court,² Debtor filed his Motion for Reconsideration prior to filing his Notice of Appeal,³ thus invoking Federal Rule of Appellate Procedure 4(a)(4). Pursuant to Appellate Rule 4(a)(4), when a notice of appeal is filed while a motion for reconsideration is pending, the notice of appeal becomes effective only when the order disposing the motion for reconsideration is entered. The Court will therefore consider Debtor's Motion for Reconsideration as if no notice of appeal had been filed.

While courts have the authority to alter or amend previously entered judgments pursuant to Federal Rule of Civil Procedure 59(e), motions for reconsideration serve the limited function of correcting manifest errors of law or fact, *In re Ionosphere Clubs, Inc.*, 103 B.R. 501, 503 (Bankr. S.D.N.Y. 1989), and should not be used to raise arguments that could have been raised before the subject judgment was issued, *O'Neal v. Kennamer*, 958 F.2d 1044, 1047 (11th Cir. 1992). Motions for reconsideration cannot be used to relitigate issues previously decided. *In re Hollowell*, 242 B.R. 541, 542-43 (Bankr. N.D. Ga. 1999) (Murphy, J.).

² See *Doe v. Bush*, 261 F. 3d 1037, 1064 (11th Cir. 2001).

³ Though Debtor's Motion for Reconsideration was docketed as entry number 44, after the Notice of Appeal, which was entry number 43, the time stamps indicate that Debtor's Motion for Reconsideration was filed at 9:39a.m. and the Notice of Appeal was filed at 9:41a.m. The Motion for Reconsideration was therefore pending upon the filing of the Notice of Appeal.

Debtor's Motion for Reconsideration states that while the Court dismissed Debtor's case for failure to meet the standards of confirmation, including funding the plan and providing tax returns to the Trustee, "[t]he Order did not spell out the standards for confirmation of the Chapter 13 plan and how the debtor has failed to satisfy that standard to be of guidance to the debtor who is proceeding pro se." Debtor's Motion also states that though he had not funded his Chapter 13 plan, he filed a motion to suspend plan payments until the end of February 2008. That Debtor was not familiar with the requirements for confirming a Chapter 13 plan is not a basis for reconsideration of this Court's December 27, 2007 Order.⁴ In its Order, the Court noted that Debtor's failure to pay any money into his Chapter 13 plan was one basis upon which confirmation was denied and Debtor's case was dismissed.⁵ In his Motion for Reconsideration, Debtor requests that the Court suspend his plan payments so that no payments become due until the end of February 2008.⁶

Debtor had the opportunity to attend his confirmation hearing and to resolve the Trustee's outstanding objections to confirmation or to represent himself in front of this Court and to argue why he believed he had met the standards for confirmation. Debtor failed to attend the hearing⁷ and the

⁴ For Debtor's reference, Chapter 13 plans are governed by Subchapter II of Chapter 11 of the United States Code, which begins with 11 U.S.C. § 1321. Confirmation of a plan, specifically, is governed by 11 U.S.C. § 1325.

⁵ 11 U.S.C. § 1325(2) requires that any amounts due under the plan be paid prior to confirmation.

⁶ Contemporaneous with his Motion for Reconsideration, Debtor filed his Motion for Temporary Suspension of Payment Under the Plan. (Docket No. 45).

⁷ Debtor's Emergency Motion, the denial of which is the subject of Debtor's Motion for Reconsideration, implies that Debtor was unaware of the scheduled confirmation hearing. On December 26, 2007, the same day he filed his Emergency Motion, Debtor filed a change of address with the Court. The notice of the confirmation hearing, however, was mailed on September 1, 2007, and was included in the same notice as the notice of the Section 341 meeting of creditors, which Debtor acknowledged receiving.

Court denied confirmation and dismissed Debtor's case based on the Trustee's objections to confirmation and for the reasons set forth in the December 27, 2007 Order. Debtor's desire to revisit those issues and, in effect, have the Court hold a new confirmation hearing, is not a proper basis for a motion for reconsideration. Debtor has not pointed the Court to any mistake of fact or mistake of law upon which Debtor's Motion for Reconsideration could be granted and Debtor's Motion is therefore DENIED.

Debtor's Motion for Clarification of Record

Debtor's Motion for Clarification of Record seeks an explanation regarding a filing fee deficiency notice that was issued by the clerk's office on December 26, 2007, and mailed to Debtor on or about December 28, 2007. The notice references Debtor's "Emergency Motion to reopen and vacate dismissal" and states that a \$235.00 filing fee remains unpaid. Pursuant to the Bankruptcy Court Miscellaneous Fee Schedule,⁸ a motion to reopen a bankruptcy case carries with it a fee in an amount equal to the filing fee associated with the filing of a new case under the same chapter.⁹ Part J(1)(a)(1) of the Bankruptcy Fee Compendium III¹⁰ specifies that the fee is related to the *motion* to reopen the case— not the actual reopening of the case— and is due regardless of whether the court grants or denies the motion. A \$235.00 filing fee became due upon the filing of Debtor's Emergency Motion and remains due though the motion was denied.

⁸ The Bankruptcy Court Miscellaneous Fee Schedule is prescribed by the Judicial Conference of the United States and authorized by 28 U.S.C. 1930(b).

⁹ 28 U.S.C. § 1930(a)(1)(B) provides that the fee for filing a Chapter 13 case is \$235.00. Though the total fee due upon filing a Chapter 13 petition is \$274.00, \$39.00 of that is an administrative fee and is not charged upon the reopening of a case.

¹⁰ The Bankruptcy Fee Compendium, issued by the Judicial Conference of the United States, provides guidance to bankruptcy clerks regarding the collection of fees prescribed by the Conference.

Debtor's Motion for Stay

Debtor's Motion for Stay requests that this Court stay its Order Denying Debtor's Emergency Motion pending Debtor's appeal of that Order to the District Court. Debtor correctly cites Bankruptcy Rule 8005 as the basis upon which a bankruptcy court may issue a stay pending appeal and Debtor provides the court with a number of factors to consider in determining whether a stay pending appeal is appropriate. Debtor's analysis of these factors, however, suggests that Debtor believes that a stay pending appeal in the present case would, in effect, impose a stay similar to the automatic stay provided for by 11 U.S.C. 362. In fact, a stay pending appeal pursuant to Bankruptcy Rule 8005 acts to stop— or “stay”— the effect of a judgment or order or to stop other proceedings in the case pending appellate review of that judgment or order. While the terminology used is the same, a “stay” pending appeal is not the same as a § 362 “stay” that protects debtors in bankruptcy.

In the Order at issue, the Court declined to vacate its Order denying confirmation and dismissing the Debtor's case. Because the Court took no action, staying the Order would have no effect. Likewise, because Debtor's case was dismissed, there are no ongoing proceedings and thus no proceedings to stay pending the appeal. In other words, there is nothing to stay and Debtor's Motion for Stay is therefore DENIED.

For the foregoing reasons, it is

ORDERED that Debtor's Motion for Reconsideration and Motion for Stay are hereby **DENIED** and the \$235.00 filing fee related to Debtor's Emergency Motion remains due.

The Clerk shall mail a copy of this Order to Debtor, the Chapter 13 Trustee, the U.S. Trustee, and all creditors.

END OF DOCUMENT